

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 900 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMED HANIF HUSEINBHAI MAKWANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner
MR KT DAVE, AGP nt No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2000

ORAJ JUDGMENT

#. Commissioner of Police, Rajkot City, Rajkot, passed an order on September 30, 1999, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short),

detaining the detainee under the provisions of the PASA Act.

#. The detaining authority found that the petitioner is involved in number of vehicular theft cases and branded him as a "dangerous person". The authority recorded statements of some of the witnesses in respect to the offences which were registered against the detainee and ultimately came to a conclusion that the petitioner is required to be detained under the PASA Act as other less drastic remedies may not prove to be efficacious.

#. The detainee challenges the order of detention on various grounds. However, Ms. Banna Datta, learned advocate, appearing for the petitioner has restricted her arguments to the ground of delay in passing the order of detention. In this regard, her submissions are two-fold. The first is that the last incident for which the offence is registered is of December 1, 1998. As against this, the order is passed on September 30, 1999. She therefore, submitted that there is no live link between the incident and the order. The second fold of her submission is that there are no statements of witnesses indicating the involvement of the petitioner in offences other than the registered offences. The last arrest of the detainee was on July 2, 1999, wherein he was bailed out on August 7, 1999 whereas the impugned order is passed on September 30, 1999. There is delay of about a month and three weeks. According to Ms. Datta, the satisfaction recorded by the detaining authority for resorting to detention under the PASA Act for immediate need for preventing the detainee from pursuing his activities is not genuine and therefore, the detention would be vitiated. The same may therefore, be quashed.

3.1 Learned AGP Mr. K.T.Dave has opposed this petition.

#. Considering the rival side contentions, there is no dispute about the fact that the last incident for which the case is registered against the detainee is in relation to the incident dated December 1, 1998. Thereafter, there seems to be no involvement of the petitioner in any offence. The order is passed on September 30, 1999. There is gap of about 10 months between these two dates. This aspect ought to have been considered by the detaining authority as it revealed absence of causal connection.

#. Apart from that, there is time lag between the date of arrest and release of the detainee on bail on the last

occasion and the date of order. Lastly, the petitioner was bailed out by order dated 7.8.99 and the present order is passed on September 30, 1999. There are no statements of any witnesses recorded to indicate the involvement of the petitioner in any such activity between these two dates. Further, the detaining authority has recorded subjective satisfaction for the need for detaining the petitioner under the PASA Act as detenue is required to be urgently/immediately prevented from pursuing his illegal and anti-social activities. Thus, this subjective satisfaction is not supported by the fact that there is lapse of about a month and three weeks between the date of release of the petitioner on bail and the order. The subjective satisfaction for such need, therefore, cannot be considered as genuine. The order, therefore, would stand vitiated and the petition deserves to be allowed on this ground.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated 30th September, 1999 is hereby quashed and set aside. The detenue - Mohammed Hanif Huseinbhai Makwana, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L.DAVE, J.]

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